

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

MICHAEL RENZ, et al., Case No. 3:20-cv-1948
Toledo, Ohio
Plaintiffs,

vs. WEDNESDAY, OCTOBER 7, 2020

STATE OF OHIO, et al.,
Defendants.

TRANSCRIPT OF PHONE STATUS PROCEEDINGS
BEFORE THE HONORABLE JAMES G. CARR
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For Plaintiffs: **THOMAS B. RENZ, Esquire**
ROBERT J. GARGASZ, Esquire

For Defendants: **MARION H. LITTLE, JR., Esquire**
DANIEL P. MEAD, Esquire

Also Present: **Ara Mekhjian, Esquire**
Ohio Attorney General's Office

Official Court Reporter: Stacey L. Kiprotich, RMR, CRR
United States District Court
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1 **Wednesday, October 7, 2020**

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3 (Proceedings commenced at 12:04 p.m.)

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12:04:24 5 JUDICIAL ASSISTANT: Counsel, I now have Judge
6 Carr on the line.

7 Please identify yourselves and your clients for Judge
8 Carr, beginning with the plaintiff.

9 MR. RENZ: Attorney Renz, and the clients are
12:05:07 10 Renz, et al.

11 MR. GARGASZ: Attorney Bob Gargasz.

12 MR. LITTLE: May it please the Court, Marion
13 Little and Dan Mead for the State of Ohio.

14 THE COURT: Okay.

12:05:24 15 MR. MEKHJIAN: Also present is Ara Mekhjian
16 from the Ohio Attorney General's Office, but I'm just
17 listening today.

18 THE COURT: Okay. That's quite all right.

19 I'm reviewing the papers that came in a couple days
12:05:36 20 ago and giving some thought to all of this, and also
21 reviewing some of the cases that the State cited, you know.
22 It seems to me that it's a different path than I had in mind
23 when we last talked, when the case first came in and I read
24 the complaint and gotten into some of the affidavits, part
12:05:59 25 of the affidavits, which is all I had seen at the time, and

1 not realizing that there's been a fair amount of litigation
2 here in our circuit and elsewhere on roughly the same issue;
3 it's not totally congruent with this complaint and this set
4 of allegations.

12:06:20 5 And it seems to me that the case belongs in
6 Cincinnati, okay. I mean, whatever I say and do, somebody
7 is going to be unhappy about it. Maybe everybody will be.
8 But that's -- you know, on a good day in my job, maybe half
9 of the people think I've screwed up totally, and sometimes
12:06:41 10 everybody appeals, which is fine with me.

11 But, you know, this case obviously needs adjudication
12 at a high level, and I think that we all collectively ought
13 to be moving to accomplish that result.

14 So it seems to me that, especially in light of the
12:07:02 15 content of the State's response to the demands made by the
16 plaintiffs for production of various documents on a very
17 prompt and expedited basis, we should simply forego that.

18 The circuit said in the *Governor Whitmer* case, you
19 know, at least on a rational basis standard, and I
12:07:20 20 realize --

21 (Court Reporter clarification)

22 THE COURT: At least on a rational basis -- in
23 the *Governor Whitmer* case, I think it's W-h-i-t-m-e-r, I'm
24 not sure, at least where review in this situation is on a
12:07:41 25 rational basis standard, no factual record is necessary.

1 And I realize that there's First Amendment contentions and
2 issues at play here. It's also my understanding that other
3 circuits, other courts, have looked at those, and I have not
4 looked at those cases. I have a law clerk who has simply
12:08:02 5 reported to me that there are decisions on these general
6 issues, I guess, in the Eleventh, the Eighth and Seventh
7 Circuit, and maybe some district court cases.

8 Anyway, to cut to the chase, I think what we should do
9 is forego discovery, if the State is so inclined, and
12:08:24 10 perhaps we convert it's present pleading, which reads more
11 like a motion to dismiss rather than, you know, relative to
12 any dispute of discovery.

13 And, Mr. Little, would you agree with me on that? I
14 mean, you cited the *Jacobson* case and I think a couple other
12:08:42 15 cases, the Sixth Circuit case I believe you cited, and then
16 also Judge Sargus' case on the Bucyrus Bratwurst Festival,
17 and, like I say, the tenor was, you know, telling me that
18 the case should be dismissed.

19 I mean, did I misinterpret the tenor and tone? Or
12:09:07 20 would you agree with me?

21 MR. LITTLE: Well, we were trying to outline,
22 for the Court's benefit, why any discovery would really be
23 limited from the State, if any were permitted, Your Honor.

24 THE COURT: Yeah.

12:09:19 25 MR. LITTLE: I think we were inclined to file

1 a motion to dismiss principally because the amended
2 complaint really doesn't state a claim at all. So our
3 current thought process was that, when we responded in the
4 time frame prescribed by the Court, we would offer a motion
12:09:37 5 to dismiss that hopefully the Court --

6 THE COURT: Well, as I say, I would like to
7 move expeditiously if you can. I think that's what the
8 plaintiffs want; am I correct? I mean, I certainly recall
9 that, from our early discussion, you want me to get to these
12:09:53 10 issues as quickly as I possibly can; am I correct about
11 that?

12 MR. RENZ: Your Honor, we do, but we
13 absolutely disagree with the position of the State. It's
14 the position --

12:10:05 15 THE COURT: No. I understand that. I mean,
16 what I am suggesting, and, as I say, as expeditiously as
17 everybody can manage, but, also, you know, to cover the
18 issues to the extent necessary, obviously, and to instruct
19 me because that's your job, as lawyers, to teach me.

12:10:31 20 So my thought was, quite candidly, to permit the
21 State, if it were so inclined, to file a motion to dismiss,
22 or in the alternative to deny the preliminary injunction;
23 and then obviously for you to respond, both to do so in
24 whatever timetable you want to set.

12:10:57 25 I think at that point, the issues would be joined and

1 I would turn to it promptly. I would simply let you folks
2 cut ahead of everybody else in line. Right now I've got
3 maybe about eight to ten motions that are decisional, but
4 they are all fairly recently decisional. I think most of
12:11:14 5 them have only been decisional since sometime perhaps in
6 August, so it is not as though -- I may have some older than
7 that, but it would be no inconvenience to me or the other
8 party -- other people awaiting a decision if I were to give
9 this case priority. I think it deserves it. It's a very
12:11:34 10 important case, and I think we're all aware of that.

11 So that being said, let me ask plaintiffs' counsel how
12 that sounds to you.

13 MR. GARGASZ: Your Honor, this is Attorney Bob
14 Gargas on behalf of the plaintiffs.

12:11:48 15 Earlier on, I believe I heard you say, and I want to
16 be clear, you see this as a case where we could forego
17 discovery because there is no factual basis as necessary
18 to --

19 THE COURT: No --

12:12:07 20 MR. GARGASZ: I guess I was a bit confused on
21 that.

22 THE COURT: Yeah. No. The Sixth Circuit
23 stated, I think, in Judge Gibbons' opinions that the
24 rational basis test can be applied without the need for a
12:12:20 25 factual record. And that basically, you know, I think it

1 would be appropriate, however, for the State, if it wanted
2 to -- it would be up to it -- to append to its motion.
3 Simply, I've got your affidavits, and I've got to permit the
4 State, if it so desires, to append any statements that
12:12:52 5 either the governor or the former health director had made.
6 I think they would be admissible under Rule 803(8), you
7 know, the public documents or statements exception to the
8 hearsay rule, the first segment of that rule. And crudely
9 translated -- I can't cite it, but basically, you know,
12:13:15 10 statement made of an official relative to the duties of his
11 or her office, that that statement -- I don't know. I have
12 no idea. I don't Google it or whatever when a case is
13 before me. But I assume both the governor and the health
14 director made public statements setting forth why they were
12:13:37 15 doing whatever it was that they were doing and have done
16 that you are challenging. And --

17 MR. RENZ: Your Honor.

18 THE COURT: Yeah -- and let me just finish.

19 It is up to you guys. We can take as much time or
12:13:54 20 little as you want. But as I say, you know, whatever
21 decision I write, at whatever length I write it, and however
22 solid it may or may not be, it's going to Cincinnati. It
23 will be, at best, the third brief in the Court of Appeals,
24 and that's commonplace in cases that clearly are destined
12:14:18 25 for review in a higher court.

1 And in all candor, to the extent, in particular, if
2 the plaintiffs -- I think they are pressing a sense of
3 urgency, that this is something that needs to get
4 adjudicated in the matter of great public interest, and I'm
12:14:37 5 sure that the State would like as much clarification as it
6 can. And whatever I say or do, in the long run is going to
7 be meaningless in the sense that it won't matter because it
8 will be a district court, and there will be a higher court
9 or courts that will address these issues, either the Sixth
12:14:59 10 Circuit or perhaps the Supreme Court.

11 And then to the extent that either or both sets of
12 parties would like to, you know, avoid delay and, you know,
13 learn what the law is in the current state of the law, it
14 just doesn't make sense to me to spend a whole lot of time
12:15:23 15 or any time conducting discovery, because, you know, the
16 requests that the plaintiffs have made are not something
17 that you folks can turn around in a week or whatever, or
18 even a month or two perhaps. And at least, as I read the
19 *Whitmer* case, the Sixth Circuit has expressed a view that,
12:15:51 20 you know, a factual record need not accompany the State's
21 argument that it had a rational basis for a gubernatorial
22 action.

23 And, again, I tried to express last time when we were
24 together, the State wants a prompt preliminary injunction
12:16:14 25 hearing, but they also want discovery, so it's (inaudible)

1 in two different directions.

2 And, again, to the extent that either or both parties
3 think that, you know, a final determination by the Sixth
4 Circuit or the Supreme Court is necessary or desirable, and
12:16:36 5 I'm sure you both do, then why spend unnecessary time before
6 me and then go up on appeal?

7 MR. GARGASZ: Your Honor, this is Attorney
8 GargasZ again for the plaintiffs.

9 THE COURT: Yeah.

12:16:52 10 MR. GARGASZ: And I just wanted to bring up
11 the fact that I believe Attorney Marion Little had agreed in
12 our conference that we could stipulate to various
13 information that was presented in the complaint.

14 Marion, do we still have that agreement with respect
12:17:08 15 to those stipulations on, like, the CDC findings and the
16 statements and so forth attributed to the defendants?

17 MR. LITTLE: I think, Your Honor, we're
18 certainly not going to object as to the authenticity of
19 formal publications from the CDC or the State of Ohio.

12:17:32 20 And to address the Court's one comment, the plaintiffs
21 have referenced many of the Health Orders in its complaint.

22 THE COURT: Right.

23 MR. LITTLE: And so the Court might be able to
24 take notice of those orders as --

12:17:42 25 THE COURT: Yeah.

1 MR. LITTLE: -- a resolution of the motion to
2 dismiss that we would be pleased to file with the Court.

3 THE COURT: Yeah. So, I mean, basically I'm
4 asking the plaintiffs, what do you want? Do you want to
12:17:57 5 spend a lot of time with me? Or do you want all of us to
6 focus on getting the case out of my court and down to
7 Cincinnati?

8 MR. RENZ: Well, Your Honor, this is Attorney
9 Renz.

12:18:12 10 One of the things that -- you know, from our position,
11 we've included a lot of facts and a lot of things that would
12 normally not be given prior to the discovery conference in
13 our case, which you noted was fairly an unorthodox filing.

14 We did that in part, citing CDC and State comments,
12:18:32 15 for particularly the reason that we believe that discovery
16 is a critical aspect of this case and should be granted as
17 quickly as possible.

18 Ultimately, our position is that the State made the
19 decision to lock down an entire state, to destroy peoples'
12:18:49 20 businesses, to destroy peoples' livelihoods. And all we're
21 asking for is some data to back that up, because had they
22 not offered -- if the data doesn't support it, then it's
23 arbitrary and capricious.

24 Now, I understand the Sixth Circuit ruling. But what
12:19:03 25 we have presented also shows that the State's words and the

1 State's actions are not congruent, they don't mesh, and so
2 we view this as arbitrary and capricious.

3 THE COURT: We're looking, you know,
4 basically -- and, well, perhaps I should ask Mr. Little. I
12:19:30 5 mean, is your view on discovery, if any, relative to either
6 filing a motion -- to file a motion to dismiss, or in the
7 alternative to deny the request for preliminary injunction?
8 What's your thought on that route?

9 MR. LITTLE: Your Honor, the motion to
12:19:47 10 dismiss, of course, by rule, does not require any discovery.

11 THE COURT: Right.

12 MR. LITTLE: And we have a very good motion to
13 dismiss that we can supply to the Court.

14 THE COURT: Yeah.

12:19:58 15 MR. LITTLE: With respect to the balance, what
16 the Sixth Circuit in the *Whitmer* case said, and I know the
17 Court hasn't had an opportunity to review that decision, but
18 that case, in part, was an effort by the district court to
19 say that the State didn't prove certain points and the State
12:20:15 20 didn't offer certain evidence.

21 THE COURT: Right.

22 MR. LITTLE: And what the Sixth Circuit made
23 clear is that the State doesn't have to do any of those
24 things when, under a rational basis test, it could be simply
12:20:25 25 speculation. To have that issue resolved I think would be

1 fairly easy.

2 We certainly did not cite for the Court, but there is
3 probably 40 or 50 COVID decisions out there by the federal
4 courts denying efforts by plaintiffs to secure injunctive
12:20:43 5 relief enjoining a State's enforcement of the COVID
6 restrictions. So if nothing else, the sheer number of cases
7 out there supporting this type of action by the State would
8 further support the State of Ohio's action and --

9 MR. RENZ: We disagree with that.

12:21:05 10 THE COURT: Go ahead. Timeout. Wait a
11 minute. Let me say to both of you: Having reviewed and
12 read only *Jacobson*, *Whitmer* and the *Bratwurst* case, because
13 that's all that's came to my attention for a couple of days,
14 if memory serves, and I've had some pretty busy days in
12:21:37 15 between with the conferences and Zoom court proceedings, and
16 I think I was able to turn to this I think yesterday or the
17 day before. I think it was yesterday. I spent as much time
18 as I can in the interim. And, you know, I had a law clerk
19 this morning and told me that, you know, there are a number
12:21:54 20 of cases, and I realize there are upwards of 40.

21 But I do think, Mr. Renz, that in light of the rather
22 quite clear and I think unequivocal statements regarding --
23 in both the *Whitmer* case, and, of course, in the face of a
24 motion to dismiss, discovery is not -- you just don't allow
12:22:19 25 discovery because you look at the four corners of the

1 complaint and that's it, and that's a rule that I, you know,
2 follow unvaryingly, and --

3 MR. RENZ: We don't disagree.

4 THE COURT: Excuse me. The simple fact of the
12:22:31 5 matter is I misapprehended. Okay? I had no idea that there
6 was other COVID-related litigation or decisions, you know,
7 until I read the State's response to your request to it.
8 And I had noted, of course, that you basically said in your
9 complaint that, you know, although *Jacobson* may appear to be
12:23:12 10 pertinent or to relate, you know, control in this case, in
11 your view it does not, but that's a legal issue. I mean,
12 that's what has been raised in various forms.

13 And I had no idea of the multiplicity of forms in
14 which it has been raised. I haven't read those cases. And,
12:23:38 15 you know, *Jacobson* obviously involved a local health
16 department, the Cambridge Health Department, and, of course,
17 it involved a situation where, at least in the modern
18 perception, under the case of *Schmerber versus California*, a
19 case of involuntary withdrawal of a blood sample from about
12:24:00 20 40 or 50 years ago, it involved actual intrusion into one's
21 body, subject to the pain and penalty, at the rate of a
22 hundred years ago, a \$5 penalty. That was a criminal case;
23 it wasn't a civil case.

24 And so, again, I think that, again, Mr. Renz and Mr.
12:24:25 25 Gargas, I had the distinct impression that you wanted this

1 case to move very promptly.

2 MR. RENZ: We do, Your Honor.

3 THE COURT: And I think my point to you is,
4 well, what's the point of, you know, spending a lot of time
12:24:43 5 here with me, when what I say in the end run doesn't matter
6 because it will be superseded, undoubtedly, by whatever the
7 Sixth Circuit says? And so the shelf life of whatever I say
8 in terms of its significance to anybody or anything will be
9 whatever it takes for the Sixth Circuit to, you know, do
12:25:13 10 what it will do with the result that I reach and my
11 rational. And so I'm telling both of you --

12 MR. RENZ: And so --

13 THE COURT: Go ahead, Mr. Renz. I apologize.

14 MR. RENZ: No, no. I apologize, Your Honor.

12:25:28 15 I'm just very intent in terms of this case, so I do
16 apologize.

17 THE COURT: Sure.

18 MR. RENZ: So we do want this to move quickly.

19 One of the things that we've really distinguished in our
12:25:43 20 case -- and I'm actually going to go somewhere with this --
21 is we included a massive amount of facts related to our case
22 which we would and have every intent of meeting our
23 evidentiary standards on by the time we got to either a
24 hearing or a trial. Yeah, obviously, in the initial
12:26:02 25 submission, you know, we haven't finalized all of those in

1 terms of the necessary evidentiary standards, but we
2 certainly will by the time trial rolls along, or by the time
3 a preliminary injunctive hearing rolls along, as far as that
4 goes.

12:26:20 5 And one of the things I would submit to the Court very
6 humbly is, yes, there are a lot of COVID cases. The one
7 that really distinguishes our case is that we've used CDC
8 data, we've used Ohio Health Department data, we've used
9 their statements to show that -- to rebut the rational basis
12:26:38 10 issue.

11 Now, we knew going into this that this would probably
12 be challenged on a rational basis question, and so it was
13 our duty then to say to the Court, Your Honor, we
14 understand, but we have shown, using their words and their
12:26:57 15 data, that there is something that doesn't smell right here.
16 And we've shown essentially that for a disease that's
17 roughly equivalent to the yearly influenza, we've shut down
18 and taken all these actions. And the question that we were
19 asking the Court really has always been is it constitutional
12:27:13 20 to limit all of these rights in the way that they have under
21 this emergency order.

22 And if you recall, we cited the *Blaisdell* case, which
23 was a case that came out in the '30s in the Great Depression
24 where they challenged an emergency declaration. And the
12:27:29 25 Court in *Blaisdell* clearly stated that they had the right to

1 question the extent and duration of the emergency.

2 Now, we certainly asked a lot of other questions in
3 this case, but one of the core questions and probably the
4 most relevant was the question: Can this emergency
5 continue? Our position is that it should not continue.

12:27:46

6 We've shown, using CDC's data and word, that we've rebutted
7 the presumption necessary, we believe, that there is a
8 rational basis for this, and shown, based on the State's
9 facts, many of which, as Mr. Little stated, are coming from
10 CDC tax documents, things like that, they've shown that this
11 is roughly equivalent to the yearly flu.

12:28:10

12 So with that in mind, underlying this entire case is
13 the question: Is the data that the State is presenting --
14 because what the State is saying on TV and what the State
15 and the CDC are presenting in terms of their actual data are
16 two totally different things.

12:28:31

17 And our position is if you look at what they've
18 written, not what they've said, and dig into those deep
19 enough, you're seeing an emergency injunction and lot of
20 fear tactics that are being used to justify something that
21 is unjustified under the law, even under a rational basis
22 review, which we don't believe is the correct standard. But
23 even under that rational basis review, we do not believe the
24 State can get there. We --

12:28:45

12:28:58

THE COURT: Well --

1 MR. RENZ: -- do not believe that they can.
2 Yeah, we know that we have the duty, but we think that our
3 facts in there -- and if you look at the citations and
4 everything else, you'll see, but we think that we've gotten
12:29:11 5 to a point where discovery is justified and we are
6 interested in moving along.

7 And if we need to appeal the question of when
8 discovery should begin, I mean, certainly we can do that,
9 and we leave that to Your Honor. But, ultimately, we
12:29:27 10 believe that we have rebutted successfully the State's
11 position in the complaint.

12 THE COURT: But let me say this: At the
13 anticipatory of whatever the State might say, and the State
14 is entitled -- the cases are legion -- that in its making a
12:29:53 15 response to a motion for preliminary injunction, is entitled
16 concurrently to move to dismiss.

17 And, you know, I have the sense, from what Mr. Little
18 said a few minutes ago, that it believes as vigorously as
19 you do that he's correct and you are wrong. You believe the
12:30:14 20 other way around. But none of us have seen the State's -- a
21 more formal presentation. I mean, the State, you know,
22 took, as it were, a glancing blow toward the complaint, but
23 it was simply in a document filed in anticipation of this
24 session, which you all anticipated would be a
12:30:41 25 discovery-related session because that's how I framed it

1 when focusing on the request for a preliminary injunction.

2 And having read things that I had not read beforehand,
3 before the other conference, I think it's appropriate to
4 give the State the opportunity, if it chooses, to file a
12:31:09 5 motion to dismiss, or in the alternative to deny a
6 preliminary injunction, or whatever else it wants to file.

7 I don't necessarily want to, you know, forecast what exactly
8 the frame in which it will cast its arguments, but that's up
9 to it.

12:31:30 10 And, again, each of you can take as much time as you
11 want or as little as you want with regard to that motion
12 practice. But at this stage, you know, particularly if they
13 file a motion to dismiss, there is no right to discovery,
14 there is no right to discovery under the civil rules and
12:31:55 15 case law. And, certainly, I don't believe I have ever
16 allowed discovery when a motion to dismiss is pending, and,
17 Lord knows, I've had plenty of motions to dismiss in
18 41 years as an Administrative Judge and District Judge. I'm
19 dealing with -- I've got one right now that one of my clerks
12:32:20 20 was doing some editing and working on, literally as we talk,
21 except she's sitting in on this now.

22 So that being said, Mr. Little, in terms of -- what do
23 you want to do and when do you want to do it?

24 MR. LITTLE: Your Honor, we will be proceeding
12:32:44 25 with the filing of a motion to dismiss. Our response was

1 due the last week of October, I think the 30th; but perhaps
2 given the Court's comments, we can advance that to the 23rd?

3 THE COURT: Okay. Whatever you want. It's
4 your call. It's entirely up to you and --

12:32:59 5 MR. LITTLE: Okay.

6 THE COURT: Go ahead.

7 MR. LITTLE: Well, then perhaps what we'll do
8 is just follow the original schedule the Court put in its
9 minute entry of September 9th, which is identified as --

12:33:19 10 THE COURT: I don't recall. Which was?

11 MR. LITTLE: We were to file our answer within
12 30 days of the plaintiffs' submission of its amended
13 complaint.

14 THE COURT: Okay. That's fine.

12:33:34 15 MR. LITTLE: We'll just follow that. That
16 puts us towards the end of October.

17 THE COURT: That's fine. Whatever you want.
18 If you want file it sooner -- and then, Mr. Renz, how much
19 time do you want for your opposition to their motion?

12:33:55 20 MR. RENZ: I would ask for a minimum of two
21 weeks. I would say two weeks would probably be sufficient.

22 THE COURT: Of course. Well, I mean, it is up
23 to you. I would suggest to you, sir, I think that the rules
24 give you more time than that.

12:34:15 25 MR. RENZ: Let's go with the rules, and we can

1 always submit it early if we need to.

2 THE COURT: Okay. And I believe -- I mean, I
3 normally allow a month. It's been a long time since I
4 looked at the rule. I think the rule is 20 days. Does
12:34:31 5 somebody know better than I?

6 MR. RENZ: I thought it was 30, but it's been
7 a while since I've looked at it, the same thing.

8 THE COURT: Yeah, me too. Whatever it is, I
9 will stick it in. Okay?

12:34:41 10 MR. RENZ: Thank you, Your Honor.

11 THE COURT: And then, Mr. Little --

12 MR. GARGASZ: Judge.

13 THE COURT: Pardon me?

14 MR. GARGASZ: Judge, this is Attorney Gargas.

12:34:47 15 I recall under the previous order, I believe it was
16 November 13th was our deadline to respond and reply.

17 THE COURT: I mean, if that's okay with you, I
18 mean, that's -- whatever, and then I will --

19 MR. RENZ: We would rather have the --

12:34:59 20 THE COURT: Okay.

21 THE RENZ: We'll take whatever time we can
22 get, Your Honor, and we can do it faster if we need to.

23 THE COURT: Okay. Good. So if one of my
24 clerks can do a quick check, smarten up the chump -- namely,
12:35:17 25 me -- in terms of when it comes to knowing those deadlines.

1 I'm serious, I get people a month after discovery for
2 summary judgement, between a month for opposition and two
3 weeks for the reply.

4 So let's find out the time and then we can fill that
12:35:29 5 blank in.

6 MR. LITTLE: Your Honor, under your published
7 preferences, it's 30 days on motions.

8 THE COURT: I mean, whatever you want. You
9 want the full 30 days, that's perfectly all right with me.

12:35:43 10 MR. RENZ: Yes, Your Honor.

11 THE COURT: Okeydoke.

12 So the order will be: Defendants to file -- to answer
13 or otherwise to file a motion to dismiss, or in the
14 alternative, if you want, Mr. Little, obviously whatever you
12:35:59 15 file -- the defendants to file a motion to dismiss, or
16 otherwise plead on or before -- and what was that date, Mr.
17 Little, you wanted? Again, tell me again.

18 MR. LITTLE: Bear with me a second,
19 Your Honor. I think I have it docketed here.

12:36:16 20 THE COURT: If you want more time, if you want
21 a month, that's fine with me.

22 JUDICIAL ASSISTANT: It was October 30th.

23 THE COURT: Well that's a little short. Mr.
24 Little, why don't we say in 30 days. If you file it sooner,
12:36:29 25 that's fine. Okay?

1 MR. LITTLE: Thank you, Your Honor.

2 THE COURT: You've got a lot -- the amended
3 complaint and so forth, the motion, are pretty bulky.

4 And then the plaintiffs will have -- shall file their
12:36:46 5 opposition within 30 days of the date of the filing of the
6 defendants' motion; and then the defendants shall have
7 15 days within which to file their reply.

8 Does that work for you, Mr. Little?

9 MR. LITTLE: It does, Your Honor. Thank you.

12:37:08 10 THE COURT: Okay. And so in terms of the
11 discovery requests, I'm simply going to hold further
12 proceedings, including discovery, held in abeyance pending
13 adjudication of the motion to dismiss. Okay.

14 I will note your objection, Mr. Gargas and Mr. Renz,
12:37:28 15 but, you know, that is the rule.

16 And I will simply note in passing that the current
17 format for the request really, when and if the time comes
18 for that, be cast, you know, as either request for
19 admissions, interrogatories, or, you know, notice of
12:38:00 20 deposition and request for production of documents and so
21 forth, but we'll worry about that when and if the time
22 comes.

23 I would suggest to you, Mr. Little, that you -- I
24 mean, it does seem to me that if I were to overrule the
12:38:17 25 motion to dismiss, that I would suggest to you that you

1 might want to request -- I think it is 1262(b) or whatever,
2 the request for interlocutory review, given the nature and
3 importance of the case. I really do think that the issues
4 raised in this case need to get appellate review as promptly
12:38:45 5 as possible.

6 And I can assure you that once this becomes
7 decisional, it's going to take me a while to get something
8 out, but I will try to get something out in a couple of
9 weeks, or certainly within a month at the latest after it's
12:39:03 10 decisional.

11 MR. RENZ: Your Honor, this is Attorney Renz.

12 If you don't mind me asking, do you have a preference,
13 I mean, for putting this before the Appellate Court?

14 THE COURT: I mean, no. I'm just saying my
12:39:17 15 point is, as I put it before, what I do and say isn't going
16 to matter. But, you know, I'm a weigh station on the way to
17 an end station. Okay? I'm not a whistle stop, but it's,
18 you know, a necessary stop, as it were, the train has to
19 make. Okay? I've got to load my baggage onto it to get
12:39:43 20 unpacked down in Cincinnati, and perhaps in Washington.
21 Okay?

22 MR. RENZ: Yes, sir, Your Honor.

23 THE COURT: Although other cases, these issues
24 may get resolved at some point in the meantime, next year or
12:39:56 25 the year thereafter while this one is still, you know,

1 winding its way. But that's all I'm saying, you know. I
2 obviously can't simply say I hereby transfer this case or
3 reassignment to a panel of three judges in Cincinnati. I've
4 got to do my own work and I will. Okay. It's important. I
12:40:17 5 mean, the parties deserve, and the circuit is going to
6 expect, that I present a crafted and reasoned decision, even
7 though either or both of you are not going to be happy with
8 me. But that's something every judge has to learn to live
9 with; it is not a popularity contest, and, like I say, half
12:40:40 10 of the people you deal with on a good day are mad at you and
11 appeal, so anyway. Okay.

12 Let me ask plaintiffs, anything further at all?

13 MR. RENZ: I think we understand, and we are
14 going to proceed as you ordered, Your Honor.

12:41:01 15 THE COURT: Okay. Good. The only thing I
16 would ask is it is not my custom to impose page limits, but
17 I would ask, please, try to keep it within 20 to 30 pages,
18 if you could. I mean, if you can't, you can't, okay, but if
19 you would be able to, just in terms of my ability to do my
12:41:25 20 work. I may have mentioned, I make no secret of it, I have
21 a vision impairment that is causing me to lose and has
22 caused me to lose -- it's been happening for about 20 years.
23 It's finally reached sort of its end stage where I'm losing
24 my vision. I can still read, but it is much more efficient
12:41:54 25 and effective for me to, as I was doing this morning, to

1 simply download materials to an application that enables me
2 to read by audio on my iPhone or iPad. And so I would only
3 ask that -- and I can do that more quickly than I can read
4 or anybody can read actually, about a page a minute, with
12:42:22 5 good comprehension. But understanding that, please be
6 mindful that, you know, write what you need to write at
7 whatever length you need to, but keep in mind that I prefer
8 that it's what you need to do rather than more elaborate,
9 you know, more elaborate length and extent. Okay?

12:42:47 10 Okay. Once again, anything further for the
11 plaintiffs?

12 MR. RENZ: No. Thank you, Your Honor.

13 THE COURT: Mr. Little and company, anything
14 further for the defendants?

12:42:56 15 MR. LITTLE: No. Thank you, Your Honor.

16 THE COURT: Okay. And, as I say, I don't
17 think it would be inappropriate if you wanted to offer, you
18 know, whatever statements have been made, but, again, I will
19 leave that up to your discretion and perhaps further
12:43:18 20 conversation with plaintiffs' counsel. It's your case and
21 it's your call as to what to do, and I will also leave it up
22 to the two of you whether to submit any stipulations of any
23 sort or kind. Again, you guys can work that out one way or
24 the other, and it doesn't matter to me.

12:43:37 25 What does matter to me is the instruction that I'm

1 going to get from reading your briefs in context, of course,
2 of the complaint and the pending motion. Okay. Okeydoke.

3 MR. RENZ: Thank you, Your Honor.

4 THE COURT: Stacey, you want to give them your
12:43:57 5 phone number in case they want a transcript?

6 THE COURT REPORTER: Yes. It's
7 (419) 213-5520.

8 THE COURT: Okay. Very well. Thank you,
9 folks.

12:44:12 10 And I do apologize that I hadn't foreseen -- I sent
11 you off in the wrong direction for a while, the last few
12 weeks, from what I had sort of, you know -- just I simply
13 reflect of the anticipated discovery, and I don't think it's
14 necessary or permissible at this stage. So to the extent
12:44:34 15 that you've taken your time thinking about focusing on that,
16 I apologize for that.

17 Okay. Good enough, folks. Thank you very much. That
18 will conclude this session. Thank you. Bye-bye.

19 (Proceedings concluded at 12:44 p.m.)

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21 **C E R T I F I C A T E**

22 I certify that the foregoing is a correct transcript
23 of the record of proceedings in the above-entitled matter
prepared from my stenotype notes.

24 /s/ Stacey L. Kiprotich 10/11/2020
25 STACEY L. KIPROTICH, RMR, CRR DATE